

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JAN 06 2004

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

AN INVESTIGATION INTO WARREN COUNTY)	CASE NO.
WATER DISTRICT'S RATE SCHEDULE FOR)	2002-00042
SERVICES WITH PRIVATE FIRE PROTECTION)	
FACILITIES)	

WRITTEN COMMENTS OF BARREN RIVER DEVELOPMENT COUNCIL

Comes Barren River Development Council ("BRDC"), by counsel, and submits the following written comments to be considered by the Commission.

BRDC adopts, and incorporates herein by reference, all comments filed with the Commission by the Attorney General's office, and specifically those filed on or about September 16, 2003 and November 14, 2003. BRDC also adopts, and incorporates herein by reference, the comments filed by the City of Bowling Green, and specifically those dated April 11, 2003, November 13, 2003, and November 10, 2003.

It is the position of BRDC that the Warren County Water District has been charging BRDC standby fees for private fire protection services since September 1992, and continues to charge standby fees. Without regard to the volume of water being used, the Water District has charged BRDC a flat fee just due to the mere fact that BRDC has private fire protection facilities in place. BRDC does have a sprinkler system in place. At no time has BRDC consumed water through its sprinkler system.

In 1992, BRDC expanded its facility for purposes of renting office space to the Barren River Development District. At that time, as a responsible landlord, BRDC elected to install private fire protection (i.e. a sprinkler system). The project was

designed for a six inch waterline to be connected to the main provided by the Water District. Attached hereto as **Exhibit A** is a diagram of the waterline and connections to be used, with the meter box involved. As can be seen from this diagram, the system was designed and engineered for a six inch line, and only one meter. Beyond the metering point, the line was to supply regular or domestic use, in addition to the sprinkler system. This system was approved by governing agencies. For whatever reasons, and without knowledge of or explanation to BRDC, the Water District required that the sprinkler system be separately metered. Moreover, BRDC later learned that it had to pay for the added, substantial costs of these separate meters. BRDC was never offered any reason or justification for the separate meter.¹

Since that time, the Water District has required a monthly standby fee simply because of the separate connection for the separate meter to monitor the line for the sprinkler system.

BRDC has not used the first drop of water through the sprinkler system, yet has paid over \$42,000 to date in standby fees charged by the Water District.

By review of the tariffs which have been on file and which have governed the Water District, it is apparent that at no time was the Water District ever authorized to charge the flat standby fees to BRDC. BRDC submits that it is entitled to a refund of the standby fees that have been charged by the Water District since 1992, or alternatively, is entitled to a credit towards future service, for the amounts of these standby fees that have been charged to date.

¹ The Water District already had a service line running along Graham Avenue which served the vicinity of the BRDC office. The Water District was not required to enhance its system in order to accommodate a six inch line which would provide regular water and sprinkler service for the BRDC building.

Administrative Case No. 385 was instituted to determine whether the Water District was charging a commodity component as part of the flat monthly fees charged to customers like BRDC for private fire protection. The Water District was required, at the conclusion of Administrative Case No. 385, to propose a new rate schedule, in order for the Commission to determine whether the Water District was charging a commodity component as part of its fee for private fire protection. The instant administrative action was commenced for that purpose. Interestingly, the Water District reduced the proposed fees through its proposed rate schedule, dated December 19, 2001. For instance, the Water District proposed, for a six inch meter (like that involved at BRDC), a minimum fee of \$221.30, down from the \$310.30 flat fee it had previously been charging. Apparently, the Water District had at least been charging a commodity component in the fee charged for private fire protection. This, and other inappropriate allocations, caused it to reduce its proposed rate, for a six inch meter connection, by approximately \$120 per month.

The Water District, in this administrative proceeding, has never adequately answered whether or not it is attempting to charge a commodity component as part of its revised rate structure.

807 KAR 5:095, Section 5(1) specifically prohibits use of a commodity component in fire protection rates, other than a component with a basis in actual water usage. As stated above, BRDC has never actually used any water through its connection for the sprinkler system, and therefore the Water District is not entitled to charge a component based upon actual water usage.

As the Commission will recall, its Order from Case No. 385 also restricted and prohibited the use of separate metering equipment for private fire protection unless a water district can show compelling circumstances for the need of a separate meter. 807

KAR 5:095, Section 8(1) reflects this policy by providing that “a utility shall provide service dedicated solely to a fire sprinkler system without the use of metering equipment unless good cause related to the delivery or use of the service exists...”

The Water District has never justified, nor shown any good cause or compelling circumstances as to why separate meters are required for connections for private fire protection services. The Water District cannot show good cause or compelling circumstances as to why it required BRDC to run a separate line, and install a separate meter (at the expense of BRDC), for the sprinkler system installed at the BRDC property. As stated above, when BRDC expanded its building, it had engineered a system whereby one line would serve the property for regular water consumption and private fire protection. It was engineered for this purpose. One meter could have served both purposes, capturing the exact amount of usage. For whatever reasons, the Water District required the installation of a separate meter and separate line for the sprinkler system, and required BRDC to absorb the cost at that time.

The Commission recently requested information from the Water District asking the Water District to “provide any supporting documents to show good cause for requiring private fire protection systems to be metered as stated in 807 KAR 5:095, Section 8.” See DATA REQUEST OF COMMISSION STAFF, dated October 29, 2003, at request no. 5. The Water District recently filed its response (dated November 14, 2003), and the answer to request no. 5 is evasive and vague at best. The Water District does not offer any explanation, whatsoever, as to “good cause” for requiring the separate meter. Instead, it simply refers the Commission back to its Order dated December 7, 2001 in Administrative Case No. 385. The Administrative Order gives some examples as to why a separate meter might be required for private fire protection, such as the potential for unauthorized use or theft. The Commission goes

on to explain that the risk of that is much less in a small commercial establishment as opposed to an industrial complex or large commercial center. Certainly, the facilities of the BRDC do not involve multiple hydrants, standpipes, and pumps. The Water District can offer no explanation or justification as to “good cause” or “compelling circumstances” as to why it required BRDC to have a separate meter for its sprinkler system. This is especially true considering the fact that BRDC has adequately engineered its system to be served by one single connection with one single meter.

The Commission should also be mindful of DISCOVERY RESPONSES filed by the Water District on or about August 5, 2002. The Commission will recall, at request no. 2, that the Water District “provide the number of private fire service connections by size of connection for the year ending December 31, 2001.” The Water District responded that there are no less than 38 connections for “services that use water for both normal usage and fire protection from the same service connection.” This shows that the Water District can provide private fire protection through one service connection without a separate meter. This, in and of itself, shows that the Water District cannot demonstrate “good cause”, or “compelling circumstances” for requiring separate meters. The Water District unilaterally, and without justification, required BRDC to have a separate meter (with the costs of the facility imposed upon BRDC) when it imposed the separate meter and associated installation costs on BRDC in 1992. In that same discovery response, it shows that there were nine connections for a six inch waterline whereby the customer used service for both normal usage and fire protection at the same service connection. This begs to question as to why it is that the Water District required a separate connection and a separate meter for the sprinkler system serving BRDC?

In one of its tariffs filed with the Commission (see December 1996 tariff entitled “Provisions for Standard Service, Nonstandard Service and Fire Protection” at Section I.E.) the Water District attempts to impose mandatory metering on all fire line service connections. 807 KAR 5:095, Section 8(1) prohibits a utility from maintaining any type of mandatory metering and no regulation prior thereto authorized mandatory, separate meters for private fire protection. That 1996 tariff does not comply with the Order for Administrative Case No. 385, nor does it comply with this new regulation, nor was it authorized by prior regulation. Furthermore, the Water District through its proposed rate schedule seeks to impose the mandatory minimum rates (including the rate to be charged on the six inch connection to BRDC) which states that it is to apply to “all connections where the service includes private fire protection facilities whether supplied through a meter service or an unmetered service with a detector check valve and bypass meter assembly.” As stated above, the Water District simply cannot impose such a rate structure without showing good cause for requiring a separate meter to begin with. This proposed rate schedule is contrary to the new regulation in place.

The Water District may not impose the requirement of a detector check valve and bypass meter assembly because this would seek to thwart the regulation through this indirect requirement. Again, a showing of good cause is required before this indirect requirement can be imposed by the Water District.

BRDC agrees with the Attorney General that it is appropriate at this time for the Commission to use this opportunity to determine the Water District’s compliance with Commission policy for private fire protection fees that stem from the same underlying investigation. It is appropriate for the Commission to enlarge the scope of this

investigation to address the Water District's compliance with Section 8(1) of 807 KAR 5:095.

Since the Water District began charging these flat monthly fees, they have been a moving target. The fees have varied, ranging from the current \$221.30 to \$341 charged previously. The monthly fees certainly bear no relation to any amount of water used through the sprinkler system, because no water has been used through that system. BRDC further submits that the fees bear no relation to cost-based allocation and the Water District's calculations for "cost-based" fees are flawed.

As stated above, BRDC has been charged a variety of fees over the years, which simply have not been authorized by prior regulation or approved tariff, and certainly run afoul of the regulation and the Commission's Order from Administrative Case No. 385. BRDC would remind the Commission of its policy set forth in that Administrative Order (page 6) where it provides that a water utility that provides domestic service and fire protection service through the same service connection should not be permitted to assess a charge in addition to the general service rate merely because a fire sprinkler system is served through this connection. Again, this policy is embodied in the promulgated administrative regulation. To date, the Water District has not "clearly demonstrated" that their rates for fire protection service are cost based.

Interestingly, on the one hand, the Water District would rely upon the testimony of Carryn Lee where it benefits the Water District. On the other hand, the Water District disagrees with the calculations made by Ms. Lee, because those calculations will not support the excessive fees which have been charged by the Water District. For example, Ms. Lee initially provided testimony to the effect that the monthly rate to be charged for a six inch connection should only be \$72.21 per month. This calculation by Ms. Lee shows that the Water District has charged excessive fees

to BRDC, even assuming, arguendo, that the Water District could show good cause in the first place, for requiring a separate meter. Through Ms. Lee's supplemental testimony (dated March 24, 2003) she proposes an even lower monthly rate of \$71.99 per month for private fire protection for a six inch connection, such as that provided to BRDC. She even lowers the customer charge to \$5.07 per month, applicable to meter reading and billing. The Water District complained (by Written Comments dated April 14, 2003) that Ms. Lee's calculations were inaccurate or inadequate to assess for private fire protection service, and at that point, the Water District proposed a revised rate of \$156.64 per month for a six inch connection. This certainly begs the question as to why it is that the Water District has been charging BRDC \$221.30 per month recently, and in excess of \$330 previously. Again, the proposed rate for private fire protection, such as that assessed to BRDC, has been, and continues to be a moving target, not bearing any reasonable relation to the service being provided or the cost of the service.

Even more recently, Ms. Lee has filed her second supplemental testimony (dated September 9, 2003) where she now apparently, at least in part, buys into the recent Water District arguments that more cost ought to be incorporated into the rate structure. Now, Ms. Lee proposes that a fee of \$112.95 be assessed for a six inch connection (such as that used by BRDC). She apparently suggests that the Water District should "recoup" depreciation even though customers paid for facilities initially and the Water District never justified the need for separate meters and the added initial costs. Her monthly fixed cost (apparently relating to meter reading and billing) has been reduced to \$4.11 per month. Still, the question raised is why is the Water District currently charging BRDC \$221.30 per month for the six inch connection attached to its sprinkler system, when Ms. Lee would only allocate \$112.95 per

month? Again, the rates sought to be charged by the Water District continue to be a moving target. Again, the rate calculated by Ms. Lee, if it were to be imposed, assumes that the Water District can show good cause for a separate meter. The Water District has not established good cause for requiring BRDC to have a separate meter. The rate proposed by Ms. Lee is only half of the proposed rate as set forth in the December 2001 rate schedule offered by the Water District, for a six inch meter. Furthermore, the proposed rate calculated by Ms. Lee is roughly one-third of what had been previously charged by the Water District to BRDC. The record to date does not demonstrate any clear bases for the assessments charged by the Water District. The evidence of record to date demonstrates that Water District's rate assessments over the years have been, to say the least, suspect.

The BRDC otherwise would state that the recent filings of the Water District are certainly not conclusive as to the need to assess fees to customers like BRDC, because the connections for BRDC's sprinkler system do not impose any greater demand on the Water District's system. The Water District's system was already in place at Graham Avenue before private fire protection was installed at BRDC. The Water District's recent responses (dated November 14, 2003) to the Commission's Request for Information, do not demonstrate any increased demand on the system. The Water District's response, at number 7, is vague at best, and provides no insight which was requested by the Commission. The Water District only provided copies of a couple of pieces of correspondence, which do not indicate any increased demand on the system, the property referenced in the correspondence is unrelated to the vicinity of BRDC's property. Furthermore, the Water District can, pursuant to 807 KAR 5:095, Section 2, contract with those particular customers to provide service if it requires increased demand. BRDC submits that the waterline in place at Graham Avenue at the

connection point for BRDC was already designed with water flow requirements to accommodate the sprinkler system that BRDC put in place in 1992. The private fire protection system at BRDC did not create extra demand or cost on the Water District.

CONCLUSION.

Based upon the foregoing, the Water District has not answered the following questions which are critical to this proceeding:

1. The Water District has not provided sufficient information to determine whether its proposed rate schedule excludes commodity component costs.

2. The Water District has not established “good cause” or “compelling circumstances” as to why BRDC was required to absorb the cost of a separate meter, or why a separate meter should have been imposed for this six inch service connection.

3. The Water District has not established its authority for imposing these minimum monthly charges (which BRDC submits are nothing more than standby fees), when Ms. Lee herself proposed a monthly fee as low as \$71.99 for a six inch service connection. BRDC submits that the only appropriate fee to charge for the private fire protection is the “customer charge”, if the Water District could show “good cause” for requiring a separate meter.

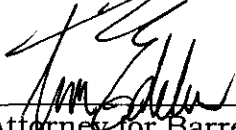
4. The Water District has not provided explanation as to why it has charged the excessive monthly fees to BRDC over the years, and has not explained the reason why those fees have had those wild fluctuations. This has been made even more curious by the Water District’s recent revised monthly fee of \$156.64, as compared to its proposed fee of \$221.30 for a six inch meter connection.

BRDC respectfully requests from the Commission that it determine that the Warren County Water District has been without authority to impose the minimum

monthly fees (standby fees), which have been absorbed by BRDC since September 1992, and therefore that BRDC is entitled to a refund of these minimum monthly charges (standby fees) dating back to September 1992. Alternatively, BRDC is entitled to a credit against future billings for the overcharges assessed by the Warren County Water District. Based upon the unresolved questions that have been pending in this proceeding for quite sometime, a hearing is appropriate to explore these issues further.

This 5th day of January, 2004.

TIMOTHY L. EDELEN
BELL, ORR, AYERS & MOORE, PSC
1010 COLLEGE STREET
P. O. BOX 738
BOWLING GREEN, KY 42102-0738
PHONE: 270-781-8111
FAX: 270-781-9027




Attorney for Barren River Development Council

NOTICE OF FILING

Counsel gives notice of the filing of the original and 10 copies of these WRITTEN COMMENTS OF BARREN RIVER DEVELOPMENT COUNCIL, by **FEDERAL EXPERS**, to Thomas M. Dorman, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601.

This 5th day of January, 2004.



Timothy L. Edelen
Attorney for Barren River Development Council

Counsel also certifies service of a true and correct copy of these Written Comments to the other parties of record, on this 5th day of January, 2004, by providing copies:

by **HAND DELIVERY**:

John David Cole, Sr.
Frank Hampton Moore, Jr.
Cole & Moore
P. O. Box 10240
Bowling Green, KY 42102-7240

Dixie R. Satterfield
Satterfield Law Office
P. O. Box 9970
Bowling Green, KY 42102-9970

and by **U.S. MAIL**, first class postage prepaid to:

Joe Liles
Warren County Water District
523 US Highway 31-W Bypass
Bowling Green, KY 42128

David Edward Spenard
Assistant Attorney General
1024 Capitol Center Drive
Suite 200
Frankfort, KY 40601-8204

Ken Meredith
Greenwood Skating Center
506 Three Springs Road
Bowling Green, KY 42104

Carryn Lee
400 Parsons Lane
Harrodsburg, KY 40330



Attorney for Barren River Development Council

UTILITY
DISTRIBUTION
System

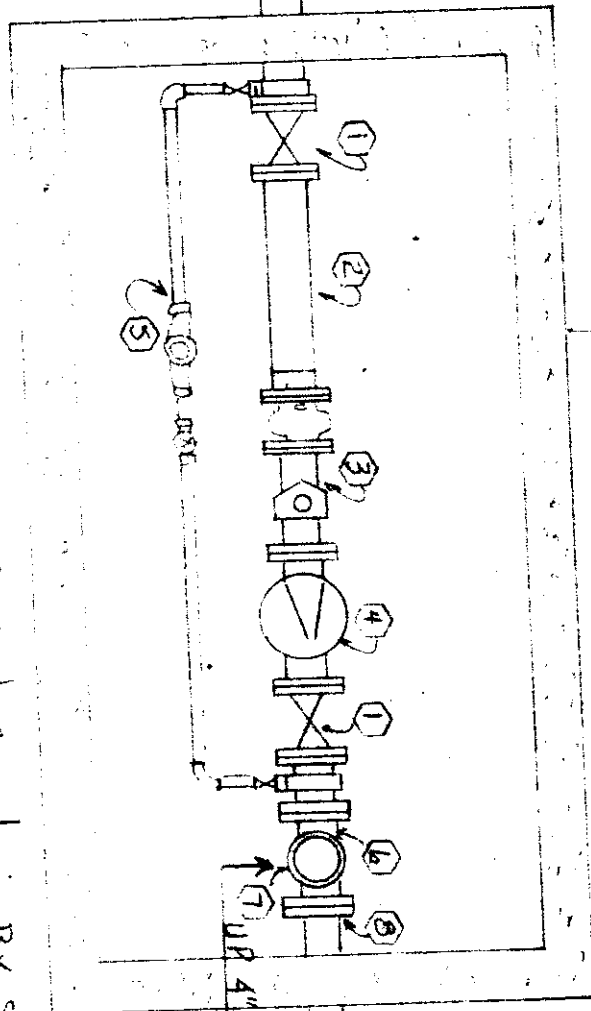
By Ky IN

By WARREN CO

- ①
- ②
- ③
- ④
- ⑤
- ⑥
- ⑦
- ⑧

6" OS&Y Gate Valve
6" X 2 6" SPOOL Piece
6" Turbin meter
6" Detector Check Valve
2" BY Pass
6" X 4" Flgd Tee
4" WARREN CK Valve
4" UNIFINHE

LEGEND



4" to System
to SIAMSE

By WARREN Co water
By SPRINKLER (INT)

Valve P.T. Detail
SCALE

EXHIBIT

A